IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 2ND NOVEMBER 2007 / 11TH KARTHIKA 1929

Crl.MC.No. 3346 of 2007()

C.C.NO.871/04 OF J.F.C.M, KOYILANDY

PETITIONER: ACCUSED

KALLARAMKETTIL SATHYAN,
S/O.LATE RARICHAN, PUTHIYANGADI AMSOM AND
DESOM, KOZHIKODE TALUK AND DISTRICT.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENTS: STATE AND COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

2. S.I. OF POLICE, ELATHUR POLICE
STATION, KOZHIKODE.

3. SHYAMALA, D/O.KITAN,
SHYAMALA HOUSE, PUTHIYANGADI AMSOM AND DESOM,
KOZHIKODE TALUK AND DISTRICT.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 02/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3346 of 2007

Dated this the 2nd day of November, 2007

O R D E R

The petitioner faces indictment in a prosecution under Section 409 I.P.C. Cognizance has been taken on the basis of a final report submitted by the police. The petitioner had come to this Court with a prayer that the proceedings against him may be quashed invoking the powers under Section 482 Cr.P.C. That petition was dismissed by order dated 8.10.05. The petitioner was permitted to raise the plea of discharge before the learned Magistrate.

2. The petitioner is now employed abroad. He is not able to return India. He is willing to appear before the learned Magistrate through counsel and seek discharge. But the petitioner complains that the learned Magistrate is insisting on the personal appearance of the petitioner before the plea of discharge is considered.

3. In the peculiar facts and circumstances of this case, I am satisfied that a direction can be issued to the learned Magistrate to permit the petitioner to advance his plea of discharge under Section 239 Cr.P.C through counsel. Personal presence of the petitioner need not be insisted until the learned Magistrate comes to a conclusion that

the charges are liable to the framed. If charges are not liable to be framed, of course, his personal presence need not be insisted.

This Crl.M.C is allowed to the above extent.

(R.BASANT, JUDGE)

rtr/-